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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 EASTERN DIVISION
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12 KARLIS RUBEN AUGUSTUS
13 HOWARD,

14 Petitioner,

15 v.

16 WARDEN M. GAMBOA,

17 Respondent.

No. 5:23-cv-02164-WLH-JDE

**ORDER ACCEPTING FINDINGS
AND RECOMMENDATION OF
UNITED STATES MAGISTRATE
JUDGE**

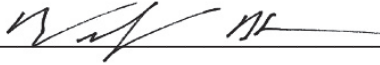
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19 Pursuant to 28 U.S.C. § 636, the Court has reviewed the original Petition
20 (Docket No. 1), the Order to Show Cause issued by the assigned magistrate
21 judge (Docket No. 5, “OSC”), Petitioner’s Response to the OSC (Docket No.
22 6), Petitioner’s First Amended Petition (Docket No. 7), the Report and
23 Recommendation of the magistrate judge (Docket No. 9, “Report”), and
24 Petitioner’s Objection to the Report (Docket No. 13).

25 On January 9, 2024, Petitioner filed an objection to the Report, which
26 contained Petitioner’s civil rights complaint for the first time. (Docket No.
27 13). Petitioner had multiple opportunities to provide his civil rights complaint,
28 and in fact was required to do so per Judge Early’s Order to Show Cause

1 dated, October 27, 2023. (Docket No. 5). While the Court must conduct a de
2 novo review of the magistrate judge's recommendation, the "district court has
3 discretion, but is not required, to consider evidence presented for the first time
4 in a party's objection to a magistrate judge's recommendation." United States
5 v. Howell, 231 F.3d 615, 621 (9th Cir. 2000). Petitioner neglected to
6 adequately explain, to the magistrate judge, his failure to provide the civil
7 rights complaint in a timely manner, and therefore "[the Court] uph[olds] the
8 magistrate judge's determination because it was based on the state of the record
9 at that time." Id. at 623.

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11 IT IS THEREFORE ORDERED that Judgment shall be entered
12 dismissing this action without prejudice.

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14 Dated: 2/22/2024

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16 HON. WESLEY L. HSU
17 UNITED STATES DISTRICT JUDGE
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